



COMMONWEALTH OF KENTUCKY  
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**OAG 17-019**

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*Subject:* Whether an unqualified city, or a county containing both a qualified and unqualified city, may enact and collect regulatory fees upon the gross receipts from the sale of alcoholic beverages. Additionally, whether a city and county may form an interlocal agreement on the use of such fees if collection is allowed.

*Requested by:* Justin S. Keown  
Ohio County Attorney

*Written by:* Shan J. Dutta

*Syllabus:* An unqualified city lacks the statutory authority to enact and collect regulatory fees pursuant to KRS 243.075, as the Legislature explicitly limited such an act to a qualified city or a county and a qualified city within that county. Therefore, an interlocal agreement between the two entities on the sharing of such fees would be meaningless.

*Statutes and  
Regulations  
Construed:*

KRS 241.010, 242.020, 242.125, 243.075 and 804 KAR 10:031.

***Opinion of the Attorney General***

You have requested input on whether Ohio County, which contains the City of Hartford (hereinafter "Hartford"), an unqualified city that recently abolished prohibition, may enact an ordinance relating to the collection of regu-

latory fees from the sale of alcohol in the city. Additionally, if Ohio County may collect such fees, you have asked if the county can enter into an interlocal agreement with the unqualified city.

An election for the purpose of taking the sense of the people as to the application or discontinuation of alcoholic beverage sales within a specified territory may be held under KRS Chapter 242. See KRS 241.010(29)(a). A petition seeking such an election, specifically a "wet" local option election, shall state "[w]e the undersigned registered voters hereby petition for an election on the following question: 'Are you in favor of the sale of alcoholic beverages in (name of county, city, or precinct)?'"<sup>1</sup> KRS 242.125(11). Such a petition for a local option election shall be signed by a number of constitutionally qualified voters of the territory to be affected, equal to twenty-five percent (25%) of the votes cast in the territory at the last preceding general election. KRS 242.020(1). Furthermore, "territory" is defined as a "...county, city, district, or precinct..." KRS 241.010(61). Pursuant to KRS 242.125(1), "[a] city shall have the right to determine its wet or dry status separate from a county's wet or dry status."

In 2016, the City of Beaver Dam, Kentucky (hereinafter "Beaver Dam"), which is a qualified city located in Ohio County, held a local option election pursuant to KRS Chapter 242 and voted in favor of permitting the sale of alcohol in the city. A "qualified city" is defined by KRS 243.075(9), which states:

- (a) As used in this section, "qualified city" means a city on the registry maintained by the Department for Local Government under paragraph (b) of this subsection.
- (b) On or before January 1, 2015, the Department for Local Government shall create and maintain a registry of cities that, as of August 1, 2014, were classified as cities of the third or fourth class. The Department for Local Government shall make the in-

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<sup>1</sup> "Wet" means a territory in which the majority of the electorate voted to permit all forms of retail alcohol sales by a local option election. KRS 241.010(66). "Dry" means a territory in which a majority of the electorate voted to prohibit all forms of retail alcohol sales under KRS Chapter 242. KRS 241.010(28).

formation included on the registry available to the public by publishing it on its Web site."

Ohio County also held a local option election relating to the sale of alcohol in the county in 2016 and voted to maintain prohibition. In 2017, Hartford held a local option election to permit the sale of alcohol within the city pursuant to the same authority as Beaver Dam and Ohio County. The results of Hartford's election allowed the sale of alcohol within the city. As such, Ohio County remained a "dry" county following the 2016 election, while Beaver Dam and Hartford voted to permit alcohol sales, becoming "wet" cities, in 2016 and 2017, respectively.

Regarding the instant opinion request, the first question relates to the authority of Ohio County to enact an ordinance to collect regulatory fees related to alcohol sales within the unqualified City of Harford. Pursuant to KRS 243.075(1)(a), "[a] qualified city or a county containing a qualified city that is wet through a local option election held under KRS Chapter 242 is authorized to impose a regulatory license fee upon the gross receipts of the sale of alcoholic beverages of each establishment located in the city or county licensed to sell alcoholic beverages." Currently, the city of Hartford remains an unqualified city as it does not appear on the list of qualified cities compiled on the Department for Local Government's website.<sup>2</sup>

Upon review, we must approach the matter with the view that the plain meaning of statutory language is presumed to be what the legislature intended; if the meaning is plain, then one cannot base its interpretation on any other method or source. *Revenue Cabinet v. O'Daniel*, 153 S.W.3d 815, 819 (Ky. 2005). Only when it would produce an injustice or absurd result should the plain meaning be ignored. See *Johnson v. Frankfort & Cincinnati R.R.*, 197 S.W.2d 432, 434 (Ky. 1946). Accordingly, this office is bound by the language used by the legislature in the abovementioned statutes.

The City of Hartford was authorized to allow the sale of alcohol within its boundaries pursuant to KRS Chapter 242. Importantly, the legislature plainly stated a territory is eligible to hold a local option election, which includes a

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<sup>2</sup> <https://kydlgweb.ky.gov/Entities/cityHome.cfm>

county or city, but does not differentiate between the classification of Kentucky cities. Furthermore, the legislature gave explicit instruction on the authority to impose regulatory license fees on the gross receipts of alcoholic beverage sales in KRS 243.075(1)(a) and limited such an act to qualified cities or a county containing a qualified city. As such, the unqualified City of Hartford may not impose such a fee on alcohol sales within its boundaries. Furthermore, Ohio County is also not authorized to impose such a fee on the City of Hartford, as the relevant statute connects a county to a qualified city within its borders, not the authority for a county to impose such a fee on an unqualified city simply because it lies in a county with a separate qualified city. Such a conclusion is not a logical interpretation of the relevant statutes and would ignore the plain meaning of KRS 243.075. As such, an interlocal agreement for the sharing of such fees would not be applicable to the City of Hartford and Ohio County.

In summary, the City of Hartford is an unqualified "wet" city pursuant to KRS 243.075 and is therefore prohibited from imposing regulatory fees on sale of alcoholic beverages within the city. Ohio County likewise is prohibited from imposing such a fee on the City of Hartford because of the city's unqualified status. Therefore, an interlocal agreement between the City of Hartford and Ohio County on the use of such a fee would be meaningless because of the absence of any such fund.

Sincerely,

ANDY BESHEAR  
ATTORNEY GENERAL



Shan J. Dutta  
Assistant Attorney General